

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

PETER A. DURSO

Petitioner.

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CHARGE NO.: 2009CH3003

HUD NO.: 050907938

ALS NO.: 09-0431

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane Viverito and Gregory Simoncini presiding, upon Peter A. Durso's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CH3003; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On March 23, 2009, the Petitioner filed a charge of discrimination with the Respondent, perfected on April 9, 2009. The Petitioner alleged in his charge that Arbors of Brookdale Apartments and The Habitat Company, LLC (collectively referred to as "the Landlords") subjected him to discriminatory terms, conditions, privileges, or services and facilities because of his association with a person who has a physical disability (Count A) and denied a reasonable accommodation for his mother's physical disability (Count B), in violation of Sections 3-102.1(B) and 3-102.1(C), respectively, of the Illinois Human Rights Act (the "Act"). On July 9, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 5, 2009, the Petitioner timely filed his Request.
2. The Petitioner, non-disabled and his mother, who is physically disabled, leased an apartment from the Landlords in Naperville, Illinois (the "Subject Property"). The Petitioner and his mother had resided on the Subject Property since 2000. His mother had been physically disabled since 1999. The Landlords were aware of his mother's disability, which caused her to use a walker or wheelchair when walking longer distances.
3. The Landlords continually renewed their lease with the Petitioner and his mother, the last time being in February of 2008, for a term ending in March 31, 2009.
4. Throughout the tenancy of the Petitioner and his mother at the Subject Property, the Landlords had maintained a parking lot with two (2) disabled parking spaces. Throughout their tenancy, the Petitioner and his mother had access to the disabled parking spaces. However, there is no evidence in the file

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

that any tenant, including the Petitioner and his mother, was specifically “assigned” a disabled parking spot.

5. Nonetheless, the Petitioner alleged in Count A of his charge that he and his mother had been assigned an accessible parking space and that in August 2008, the Landlords moved this accessible parking space to a location further from the entrance to their apartment. The Petitioner further alleged in Count A that on December 26, 2008, the Landlords threatened to terminate the Petitioner’s lease. The Petitioner alleged the Landlords engaged in these actions because of his association with a disabled person, Petitioner’s mother.
6. In Count B of his charge, the Petitioner alleged that in December 2008, the Landlords failed to accommodate his mother’s disability when the Landlords failed to remove snow and ice from the parking area and sidewalks for the Subject Property.
7. The Petitioner in his Request alleges the Respondent’s investigation report has errors. In support of Count B, the Petitioner attached to his Request a CD with photographs of snow and ice on the Subject Property. The photographs were taken on December 25, 2008. The Petitioner argues the pictures are proof the Landlords failed to accommodate his mother’s disability.
8. However, the Respondent’s investigation file contained correspondence from the Petitioner to the Landlords wherein the Petitioner acknowledges the Landlords did clear the snow and ice “eventually.” The photographs show several shoveled areas of the Subject Property which reveal snow and ice-free walkways.

Conclusion

The Commission’s review of the Respondent’s investigation file leads it to conclude the Respondent properly dismissed the Petitioner’s charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Count A, there is no substantial evidence of a violation of Section 3-102.1(B) of the Act because there is no substantial evidence the Landlords altered the terms, conditions, or privileges of the Petitioner’s real estate transaction due to his association with a disabled person. There is no evidence the Petitioner was ever assigned a specific disabled parking spot. Guaranteed access to a specific disabled parking spot was never a part of the terms, conditions, or privileges of the Petitioner’s lease agreement with the Landlords. Furthermore, the investigation file revealed that throughout their tenancy, the Petitioner and his mother always had access to disabled parking. There is no substantial evidence in the file that the Landlords had removed their access to disabled parking in August 2008.

In addition, there is no substantial evidence the Landlords threatened to terminate the Petitioner’s lease because of his association with a disabled person. Assuming the Landlords declined to renew the Petitioner’s lease in December of 2008, there is no evidence this decision was based upon the Petitioner’s association with a disabled person. The Petitioner’s allegation is further undermined by the fact the Petitioner had lived on the Subject Property with his disabled mother since 2000, and throughout their entire tenancy, the Petitioner’s mother was disabled. The evidence in the file shows the Landlords had continually renewed the Petitioner’s lease, with full knowledge of the Petitioner’s mother disability.

As to Count B, wherein the Petitioner alleged the Landlords failed to reasonably accommodate his mother’s disability in violation of Section 3-102.1(C)(2) of the Act, the Petitioner’s claim fails because he cannot establish a *prima facie* case. A *prima facie* case of a violation of Section 3-102.1(C)(2) requires some evidence that: (1) The Petitioner is disabled within the meaning of the Act; (2) the Petitioner requested a reasonable accommodation within the Landlord’s rules, policies, practices, or services; (3) the Petitioner’s

request for an accommodation was necessary to afford the Petitioner an equal opportunity to use and enjoy the dwelling; and (4) the Landlord denied the request for an accommodation. See Anast v. Commonwealth Apartments, 956 F.Supp. 792, 800 (N.D .Ill.. 1997).

In this case, there is no substantial evidence the Petitioner is a disabled person within the meaning of the Act. Furthermore, to the extent the Petitioner attempts to assert this claim on behalf of his mother, there is no evidence in the file the Petitioner has the legal capacity to do so, as there is no evidence the Petitioner was appointed his mother's legal guardian or otherwise had legal authority to file lawsuits on behalf of his mother.

Assuming *arguendo* the Petitioner had standing to assert this claim on his mother's behalf, there is no substantial evidence the Landlords refused to accommodate his mother's disability. The Petitioner specifically alleges the Landlords failed to clear snow and ice from the parking lot and the walkways. However, the evidence in the file, including the photographs the Petitioner submitted in support of his Request, demonstrates that the Landlords did clear the snow and ice as the Petitioner had requested. While the Petitioner may have been displeased with the length of time it took for the Landlords to remove the snow and ice, there is no substantial evidence in the file that the Landlords refused to make a reasonable accommodation for his mother's disability.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, Arbors of Brookdale Apartments, and The Habitat Company, LLC, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 17th day of February 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito